THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.12870 of 2006

DATED: 22.09.2006

Between:

B.Satya and four others. .. PETITIONERS

versus

The Vice Chairman, Visakhapatnam
Urban Development Authority,
Visakhapatnam. .. RESPONDENT

WRIT PETITION NO.12870 of 2006

ORDER:

This Court ordered Notice Before Admission on 27.6.2006 and interim stay was granted for a limited period. The respondent filed counter affidavit.

2. Sri P.Sri Raghu Ram, learned counsel representing the petitioners had taken this Court through the contents of the affidavit and also the prior orders passed by this Court and would submit that without complying the orders of this Court especially demarcating the land or identifying the land taking into consideration the title deeds, the respondent is further proceeding inviting expression of interest for a Mega Shopping Mall etc., and the respondent is also further proceeding with in relation to the land to which the petitioners would be entitled to. However, Smt.Preeti Reddy, learned counsel representing the respondent would submit that this is a matter to be decided by the competent civil Court and at any rate the same had been verified and it was found that the extent of land available is only 4 acres 60 cents and there is no surplus land or excess land as claimed by the petitioners and hence, the Writ Petition to be dismissed.

3. Heard both the learned counsel.

4. The Writ Petition is filed praying for a Writ of Mandamus declaring the notification in Rica No.241/2006/Er/SW, dated 8.6.2006 published on 9.6.2006 to the extent of petitioners land of 0.38 cents as illegal, vo8id and unenforceable and consequently direct the respondent to delete the 38 cents from the notification by demarcating

the same and allotting a sub-division to the petitioners and then further proceed with such notification and pass such other suitable orders.

5. It is stated in the affidavit filed in support of the Writ Petition that the action of the respondent in inviting express of interest for a Mega Shopping Mall in disputed property of the petitioners as wholly without complying the orders of this Court in WP.No.20466 of 2003, dated 7.1.2004 and the order in WPMP.No.8871 of 2004, dated 14.6.2004. It is stated that the petitioners are the owners of about 5 acres of land in survey No.30 of Pedda Waltair village within Visakhapatnam Municipal Corporation limits. While so, the respondent acquired property of an extent of 4 acres 60 cents only more than 10 years back. It is stated that the petitioners have been holding possession and title to the small extent of land left out from acquisition to an extent of 40 cents. After acquisition, it is stated that the petitioners made several requests to the acquisition authorities under the control of the respondent to demarcate their land to an extent of 40 cents and give sub-division to effectively enjoy the same as owners and since no sub-division is made, they had not developed the land and enjoyed the same. It is also further stated that the petitioners filed a suit OS.No.1100 of 1992 against the respondent for permanent injunction and in the said suit, a Commissioner also was appointed to identify and demarcate the property in possession of the petitioners. The Commissioner accordingly with the surveyor's help demarcated 5 acres of land belonging to the petitioners on the basis of the boundaries mentioned in the sale deeds and also clearly ear-marked the land which had not been acquired. According to the report, only 38 cents would be available to the petitioners and not 40 cents. It is further stated that at that stage the respondent assured to implement orders in the Writ Petition filed by the petitioners in WP.No.6487 of 1992, dated 20.5.1992 directing to survey and demarcate the land of the petitioners and also to effect sub-division, within four months. In

the light of the assurance given by the petitioners that it will be done, the petitioners had withdrawn the suit on 24.7.1997. However, the respondent never cared to implement the orders of this Court or had not taken into consideration the evidence gathered in the civil Court. In such circumstances, the petitioners were constrained to file Writ Petition No.20466 of 2003, which was disposed of on 7.1.2004. In the said Writ Petition, the petitioners prayed for a Writ of Mandamus directing the respondent to measure and demarcate and grant of sub-division of land in survey No.30 at Peda Waltair village in favour of the petitioners, and this Court made the following order:

> "directing the 1st respondent to verify the record and also the report of the Advocate-Commissioner which was filed in OS.No.1100 of 1992 on the file of the II Additional District Munsif, Visakhapatnam and take necessary steps to identify, demarcate and effect sub-division of the land left after acquisition with all effectively and expeditiously within a period of 12 weeks from the date of receipt of a copy of this order"

It is further stated that the respondent was insisting that only revenue record would be looked into and not the sale deed of the petitioners for the purpose of identification and demarcation. Hence, they filed a Clarification Petition in WPMP.No.8871 of 2004 for a direction to take into consideration the sale deed and this Court disposed of the Writ Petition with the following direction:

> "The identification and demarcation of the land as spelt in the order passed by this Court in W.P.No.20466 of 2003, dated 7.1.2004, shall be not only with reference to the revenue records and the report of the Advocate-Commissioner and also with reference to the sale deeds of the review petitioners insofar as the extent of land possessed by them prior to the acquisition".

It is stated that no action in pursuance thereof had been taken. It is also further stated that to the surprise of the petitioner the respondent had now issued a paper notification on 9.6.2006 proposing invitation

for expression of interest for Mega Shopping Mall and Highrise Commercial Complex at Visakhapatnam. Item No.1 is the property of the petitioners, which is shown as acquired land of the total extent of 1 acre 29 cents. The aid notification to an extent of 38 cents is enforceable unless and until the directions given by this Court are complied with.

6. In the counter affidavit it was stated that the orders of this Court dated 7.1.2004 and 1.4.6.2004 were duly complied with and the petitioner therein duly acknowledged the letters of this office. It is also stated that the fact remains that the total extent of survey no.30 of Peda Waltair is only 4 acres 60 cents. The FMB sketch of field No.30 of Peda Waltair is submitted herewith, which proves the same. Having admitted that the said 4 acres 60 cents was already acquired long back by VUDA, it was not understood as to how the petitioners are claiming for 40 cents of land, which is not in existence physically and how such claim of the petitioners is maintainable. It is stated that no more land is left after the acquisition of 4 acres 60 cents in survey No.30 of Peda Waltair village and this fact is well known to the petitioners. Further, the document submitted by the petitioner in support of his claim is not showing any survey number in the schedule and further it was mentioned as 5 acres approximately. It is also stated that the land adjacent to the survey No.30 of Peda Waltair, which is in S.No.26 of China Waltair was also totally purchased from Jagannadha Swamy Devasthanam by VUDA in the year 1980, vide registered document No.3347, dated 5.6.1980. Had there been any objections to the petitioners, they would have raised the same before the Land Acquisition Officer who is a statutory authority at the time of award enquiry, but the award does not disclose any objection. Further, as per the Award No.3/79, dated 31.3.1979, VUDA had also acquired the land of 4 acres 60 cents totally. It is also further stated that the petitioners are intentionally suppressing the fact that the Advocate-

Commissioner's report had not attained finality. Even before this office availed the opportunity of filing objections over the same, they withdrew the said suit voluntarily knowing that they would not succeed in the same. It is also stated that the petitioners are disputing some facts, which can only be proved by way of evidence both documentary and oral, hence, the petitioners ought to have moved a civil Court, but as the petitioners are fully aware that they have no prime facie case and also the cause of action, they have intentionally withdrew the civil suit. It is further stated that the respondent did comply the orders of this Court and informed the 3rd petitioner vide letters dated 31.3.2004 and 24.7.2004 that no more land in survey No.30 of Peda Waltair village was remaining after acquisition of 4 acres 60 cents. It is stated that the respondent-office never ever assured anything, which led the petitioners to withdraw the civil suit and it was their voluntary act. It is also stated that until and unless the Commissioner's report attained finality after an opportunity to the respondent-office for filing objections, it cannot be binding on the respondent and it can never have any evidentiary value. It is also further stated that the contention of the petitioners that this Court passed orders on 7.1.2004 is true and the respondent-office had complied with the same and communicated the facts to the petitioners vide letter dated 31.3.2004. Along with the counter affidavit, certain correspondence and certain documents also had been submitted and ultimately it was prayed that in such circumstances the Writ Petition to be dismissed.

7. As can be seen from the respective contentions of the parties and also the proceedings placed before this Court, this Court is satisfied that the order passed in WPMP.No.8871 of 2004 in WPMP.No.25624 of 2003 in WP.No.20466 of 2003, dated 14.6.2004, which had been already referred to supra, it was specified that the identification and demarcation of the land as spelt in the order passed

by the Court in Writ Petition No.20466 of 2003, dated 7.1.2004, hall be not only with reference to the revenue records and the report of the Advocate-Commissioner and also with reference to the sale deeds of the review petitioners insofar as the extent of land possessed by them prior to the acquisition". This aspect is concerned, it appears, that with reference to the ale deed further exercise had not been done though an attempt was made to verify the revenue records and also by taking into consideration the prior report of the Advocate-Commissioner.

8. Be that as it may, this Court is not inclined to express any further opinion. The dispute appears to be in relation to the demarcation of the land. The respondent is asserting that the extent of available land actually is only 4 acres 60 cents and on the contrary the petitioners are contending that even if the report of the Advocate-Commissioner in the suit, no doubt which was withdrawn, to be taken into consideration, surplus land of an extent of 38 cents is available. It is also the grievance of the petitioners that subsequent to the passing of the order referred to supra, no exercise had been done in that direction by making an attempt to actually demarcate the land with reference to the sale deeds.

9. In the light of the facts and circumstances, this Court is inclined to dispose of the Writ Petition with a direction to the respondent to comply with the directions issued by this Court in WPMP No.8871 of 2004 in WPMP No.25624 of 2003 in W.P.No.20466 of 2003, dated 14.6.2004 at the earliest point of time preferably within a period of four (04) weeks from the date of receipt of a copy of this order and till the said exercise is made and a decision is taken in this regard, status quo obtaining as on today to be maintained. It is needless to say that the petitioners to be put on notice when this exercise is taken up by the respondent.

10. The Writ Petition is disposed of accordingly. No costs.

-

22.09.2006

SSR